

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 216

Industry Research and Development Regulations 2011

Outline

1.1 Part III and section 48 of the *Industry Research and Development Act 1986* (the Act) include a number of regulation making powers. Some of these regulation making powers have been enacted to produce the regulations described in this explanatory statement.

1.2 The regulations relate to:

- requiring particular matters to be included in certificates describing findings made by Innovation Australia (which is 'the Board' and is established by section 6 of the Act);
- listing entities which may apply for advance findings on behalf of R&D entities;
- specifying the conditions of registration, and of maintaining registration, as a research service provider (RSP);
- particular information that must be required in forms approved by the Board; and
- specifying various 'research fields' for the purpose of the Act.

1.3 These regulations are described in detail in this explanatory statement. For clarity, references to the Board in the regulations include a reference to a delegate of the Board (noting that the Board has the power to delegate powers to another person or committee under the Act). Further, words in the singular in the regulations should be read to include the

plural (that is, 'activity' can also be read as 'activities'), and words in the plural should be read to include the singular (that is, 'activities' can also be read as 'activity').

Regulation making powers not used

1.4 Part III of the Act also contains regulation making powers which have not been exercised as part of this regulation making process. These remaining regulation making powers will only be used if they are required to address issues which arise in the operation of the R&D Tax Incentive program.

1.5 These regulation making powers relate to:

- requiring fees to be paid in various circumstances;
- describing conditions, in addition to those listed in the legislation, to be satisfied in respect of the 'significant scientific link test' applied in relation to overseas R&D activities; and
- describing conditions, addition to those listed in the legislation, to be satisfied in relation to reasons why R&D activities cannot be conducted in Australia.

Consultation

1.6 The regulations have been the subject of internal and public consultation processes. AusIndustry and the ATO, the administrators of the R&D Tax Incentive, contributed to the development of the regulations through internal consultation processes in late 2010 and during 2011.

1.7 Public consultation was held between 11 July 2011 and 5 August 2011. Nineteen submissions were received. Interested parties were also given the opportunity to discuss the draft regulations with officers from the Department of Innovation, Industry, Science and Research at meetings held in Brisbane, Melbourne and Sydney in early August 2011.

1.8 The main issues raised in public consultation were that:

- the requirements, in various application forms, to distinguish between activities as core R&D activities and supporting R&D activities, link supporting R&D

activities to core R&D activities, and to provide details of expenditure by the R&D entity on each activity were considered to place a burden on applicants;

- the application of the requirement to register each activity where R&D entities pay levies to RSPs (levy collecting) will create high costs for RSPs (levy collecting) in explaining each activity conducted for each levy paying R&D entity;
- the requirement for RSPs to ensure that R&D entities for whom they provide services own the results of those services was too narrow, and would not cover other legitimate arrangements, such as licensing arrangements.

1.9 The issue relating to the reporting of expenditure for each R&D activity in the registration application form has been addressed with these details to be provided only when requested by the Board. The requirements to distinguish between core and supporting R&D activities, and to link supporting R&D activities to core R&D activities, have been retained because these requirements represent a practical application of the requirements in the Act.

1.10 The issues relating to RSPs were addressed through: amendments to the requirements of the registration form to simplify the rules where an R&D entity has paid a levy to an RSP (levy collecting); and an expansion of the relevant criteria to ensure licensing arrangements and other rights to use the results of R&D services are treated the same way as legal ownership of the results of the R&D services.

Commencement

1.11 The regulations commence on the first moment of the day after the day when the regulations are registered on the Federal Register of Legislative Instruments.

Matters to be set out in certificates for findings

1.12 Under Part III of the Act, the Board has the power to make findings about activities that confirm or reject in whole or

in part an R&D entity's self assessment as to the nature of its activities. A finding may arise where:

- the Board decides to make a finding about an application for registration, or activities that have been registered, of its own accord;
- the Board is requested to make a finding on activities that have been registered by the Commissioner of Taxation (the Commissioner). The Board must comply with requests made by the Commissioner;
- the Board is requested by an R&D entity to make a finding on whether registered activities are R&D activities;
- the Board is requested by an R&D entity to make an advance finding about the nature of activities. Advance findings can be sought in relation to activities where an R&D entity:
 - has completed the activities in an income year (but before it is possible to register the activities);
 - has yet to complete the activities in an income year; or
 - has yet to conduct the activities, but can reasonably be expected to do so in the current or next two income years.
- the Board is requested by an R&D entity to make a finding about the nature and eligibility of activities conducted, being conducted or proposed to be conducted, outside Australia or the external Territories. R&D entities must apply to the Board for a finding about activities being conducted or proposed to be conducted, outside Australia or the external Territories, if the R&D entity wishes to claim a tax offset in relation to expenditure on those activities; or
- the Board is requested by an R&D entity or the Commissioner to make a finding about whether particular technology constitutes core technology. Technology is core technology if a purpose of R&D activities was or is to obtain new knowledge, make

improvements or continue the development of that technology.

1.13 Findings by the Board about whether activities constitute core R&D or supporting R&D activities are binding on the Commissioner when making a decision in relation to whether expenditure associated with the activities is or is not R&D expenditure and claimable under the R&D Tax Incentive rules. Similarly, the Commissioner is bound in relation to findings about core technology. Where more than one finding is made about the same activities or technology, earlier findings will prevail over later findings to the extent of any inconsistency.

1.14 The effect of a finding by the Board that technology is core technology is that a tax offset will not be available for expenditure incurred on acquiring the technology or the right to use the technology.

1.15 The various requirements described in the regulations, along with those described in the Act, do not limit the content of a certificate issued by the Board. The Board may include items in addition to those required by the Act and the regulations.

Certificates – findings about applications and registration

1.16 Following an application for registration of activities by an R&D entity, the Board must notify the R&D entity of its decision to register or refuse to register the R&D entity for activities for an income year. Where the Board has made a finding as part of this decision, the Board must provide a copy of the notice to both the R&D entity and the Commissioner. The notice must include a certificate in respect of each finding.

1.17 The Board may make findings after deciding to examine the registered activities of an R&D entity. In addition, the Commissioner and the R&D entity may request that findings be made about registered activities. Where the Board has made a finding as part of this process, the Board must provide a copy of the notice to both the R&D entity and the Commissioner. The notice must include a certificate in respect of each finding.

1.18 The regulations expand the minimum requirements for content of certificates as set out in the Act. The Board may include other content in a certificate as it sees fit.

1.19 In addition to the requirements in the legislation in subsections 27C(2) and 27K(2) of the Act, a certificate issued by the Board in respect of a finding must include:

- the name and ABN, ACN or ARBN (depending on the type of entity) of the R&D entity to which the finding relates;
- if the R&D entity is the head company of the consolidated or multiple entry consolidated group (MEC group), details of the subsidiary member of the consolidated or MEC group that conducts the relevant activity itself or has services provided to it in relation to the relevant activity;
- if the Board reaches a conclusion as to the times the activities were conducted (or, more specifically, the dates on which the activities were conducted), the specific times the Board is satisfied the activities were conducted; and
- if the finding is about an activity which is found to be a supporting R&D activity, the activity that, in the Board's opinion, is the core R&D activity to which the supporting R&D activity relates.

[Part 2, Regulation 2.01]

Certificates – advance findings

1.20 In addition to the requirements in the legislation in subsection 28F(3) of the Act, a certificate issued by the Board in respect of an advance finding must include:

- the name ABN, ACN or ARBN (depending on the type of entity) of the R&D entity to which the finding relates;
- if the R&D entity is the head company of the consolidated or MEC group, details of the subsidiary member of the consolidated or MEC group that either conducts, or will conduct, the relevant activity itself, or has, or will have, services provided to it in relation to the relevant activity; and
- if the Board reaches a conclusion as to the times the activities were conducted (or, more specifically, the

dates on which the activities were conducted), the specific times the Board is satisfied the activities were conducted;

- if the finding is about an activity which is found to be a supporting R&D activity, the activity that, in the Board's opinion, is the core R&D activity to which the supporting R&D activity relates; and
- the period for which the finding described in the certificate is binding on the Commissioner.

[Part 2, Regulation 2.02]

Certificates – overseas activities

1.21 In addition to the requirements in the legislation in subsection 28F(3) of the Act, a certificate issued by the Board in respect of a finding about activities conducted outside Australia and its external territories must include:

- a reference to the certificate for the advance finding about the overseas activities;
- the Board's finding in relation to the condition set out in subsection 28D(2) of the Act (the significant scientific link test), and the reasons for the finding;
- the Board's finding in relation to the condition set out in subsection 28D(4) of the Act (concerning whether the activities can be conducted in Australia or its external territories), and the reasons for the finding;
- the Board's finding in relation to the condition set out in subsection 28D(5) of the Act (the expenditure test), and the reasons for the finding; and
- if the overseas activity has a significant scientific link to an Australian core activity, the times (or dates) the Board is satisfied the Australian core activities were conducted.

[Part 2, Regulation 2.03]

Certificates – core technology

1.22 In addition to the requirements in the legislation in subsection 28F(3) of the Act, a certificate issued by the Board in respect of a finding about technology must include:

- the name and ABN, ACN or ARBN (depending on the type of entity) of the R&D entity to which the finding relates; and
- if the R&D entity is the head company of the consolidated or MEC group, details of the subsidiary member of the consolidated or MEC group that is using or will use the technology.

[Part 2, Regulation 2.04]

Research Service Providers

1.23 Under Part III of the Act, the Board has the power to register an entity as a Research Service Provider (RSP) capable of providing services in one or more specified fields of research. RSPs provide services to R&D entities by conducting R&D activities for R&D entities under contractual arrangements. The Board must be satisfied that the entity meets certain criteria set out in the regulations.

1.24 Registration is given in respect of specified fields of research which the organisation has shown that it is capable of undertaking. The Board maintains a register of RSPs, which is published each year in the Board's annual report. The register will be available via the internet.

1.25 Registering organisations as RSPs under the R&D Tax Incentive is intended to assist R&D entities to access expertise in Australia's public and private R&D organisations, to reduce unnecessary duplication of R&D facilities, and to improve the overall effectiveness of Australia's R&D effort through collaboration.

1.26 R&D entities using the services of RSPs for conducting R&D activities are exempt from the \$20,000 expenditure threshold requirement for R&D expenditure by operation of section 355-100 of the *Income Tax Assessment Act (ITAA) 1997*.

1.27 The criteria for registration of RSPs ensures a minimum standard is met by entities that the Board registers as RSPs. Prospective RSPs may apply to the Board to be assessed against one of three sets of criteria. The registration criteria that an entity is assessed against will depend upon the type of entity applying for registration, broadly categorised as follows:

- general – applicants must meet criteria relating to facilities, employment, pricing and availability. The business structure of the applicant is not a consideration. Universities will be assessed against the criteria for a general RSP.
- publicly controlled – applicants must be owned and controlled by a tertiary education institution or a government research organisation (for example, a university spin off company). Publicly controlled applicants are subject to alternative criteria relating to facilities and employment. Publicly controlled applicants must meet the standard criteria relating to pricing and availability.
- levy collecting – applicants must collect levies under a contract or memorandum of understanding with an Australian Commonwealth, State or Territory government. They must collect levies from R&D entities within an industry to fund the provision of services in relation to R&D activities. Levy collecting applicants are not subject to criteria relating to facilities and employment criteria, but must meet the standard criteria relating to pricing and availability.

1.28 Organisations which may be considered for RSP registration include:

- private sector profit and non-profit R&D organisations;
- educational institutions such as universities and other higher education institutions;
- autonomous public sector science and technology research institutes; and
- R&D units from Commonwealth and State government institutions.

Criteria for Registration as an RSP

Criteria relating to pricing and availability

1.29 Under subsection 29A(2) of the Act, an entity wishing to be registered as an RSP must satisfy the Board that it meets the criteria specified in regulations.

1.30 An entity must have the ability to provide services in the research field or fields in relation to which the entity has applied to be registered. If the RSP subcontracts the provision of these services to another service provider that is capable of delivering the services, then the primary entity must demonstrate that it:

- is able to manage the subcontracting of the services; and
- is able to understand the results of these services and is able to explain these results to the R&D entity to which the services are being provided, so that the results are clear and understandable to the R&D entity.

[Part 3, Subregulation 3.01(2)]

1.31 The rules relating to subcontracting of services by RSPs, including the rule in paragraph 3.02(2)(j), are intended to ensure that RSPs act predominantly as providers of research and development services and do not merely act as intermediaries between R&D entities and other service providers.

1.32 An entity must demonstrate that it intends to provide services to bodies corporate that are not related bodies corporate (within the meaning given by section 50 of the Corporations Act 2001) of the entity. This is to ensure that RSPs make their services widely available to maximise the opportunities for collaboration. ***[Part 3, Paragraph 3.01(2)(c)]***

1.33 An entity that charges fees or other charges for providing services must base these fees and charges on ordinary commercial terms. Entities that have a pricing policy that is not based on normal commercial terms (such as a public sector entity) must not have its fees and charges subsidised by government resources, and must not be inflated to exploit the R&D Tax Incentive for R&D activities. This is designed to ensure appropriate pricing of service provision by RSPs.

[Part 3, Subregulation 3.01(3)]

Criteria relating to facilities and employment

1.34 All applicants, other than applicants applying to be an RSP (publicly controlled) or an RSP (levy collecting), must:

- demonstrate to the Board's satisfaction that it has a right to use facilities in Australia which are suitable for researchers to carry out their work and which are appropriate to the research field or fields in which registration is being sought; and
- demonstrate to the Board's satisfaction that they employ in Australia at least one full-time researcher who either has a degree in science or technology from an Australian university, or tertiary qualification(s) from an overseas university that are recognised in Australia as being equivalent to an Australian university degree in science or technology. This requirement is not limited to a researcher having a Bachelor of Science or Bachelor of Information Technology degree. Rather, the qualifications are intended to include degrees in fields based on science or technology and include degrees in, for example, medicine or engineering and any degrees relevant to the research fields under regulation 1.04; and
- demonstrate to the Board's satisfaction that they employ in Australia four researchers as full-time employees, or a number of researchers whose work hours are equivalent to those of four full-time equivalent researchers, who have:
 - a degree in science or technology from an Australian university, or tertiary qualification(s) from an overseas university that are recognised in Australia as being equivalent to an Australian university degree in science or technology; or
 - at least five years of relevant research experience in a single scientific or technological field.

[Part 3, Subregulations 3.01(4) and (5)]

1.35 If the applicant is unable to satisfy the criteria in paragraph 3.01(5)(a), the Board may nonetheless register, or renew the registration of, the applicant, provided the Board is satisfied that the applicant can provide services in relation to its

nominated or registered fields of research and that the reliance on paragraph 3.01(5)(b) for registration or renewal of registration is temporary.

1.36 This provision is intended to prevent deregistration or non-registration of applicants where they, for example, have reduced staff close to the end of the financial year; or where they are having difficulty replacing a staff member with particular specialist skills. The Board may consider whether to amend the applicant's nominated or registered fields of research, rather than refusing to register or reregister the RSP.

[Part 3, Paragraph 3.01(5)(b)]

Criteria for RSP (publicly controlled)

1.37 An entity that is owned and controlled by a tertiary education institution or a government research organisation (the controlling institution) is exempt from the provisions described in subregulations 3.01(4) and (5). However, in addition to meeting the criteria relating to pricing and availability in subregulations 3.01(2) and (3), the entity must demonstrate that:

- the controlling institution is a registered service provider; and
- it has a right to use the research and development facilities and to the research personnel of the controlling institution sufficient to allow it to conduct R&D activities in the research field on behalf of R&D entities. The RSP (publicly controlled) need not have access to all of the controlling institution's facilities or personnel, only those which are relevant to the research fields for which the RSP (publicly controlled) is registered or intends to be registered.

[Part 3, Subregulation 3.01(6)]

Criteria for RSP (levy collecting)

1.38 An entity that is a body that collects levies from R&D entities within an industry (the contributors) to fund the provision of services in relation to the R&D activities are exempt from the provisions described in subregulations 3.01(4) and (5). However, in addition to meeting the criteria relating to pricing and availability in subregulations 3.01(2) and (3), the entity must demonstrate that they:

- have a contract or memorandum of understanding with a government in Australia to collect such levies from industry for the purposes of funding R&D. An RSP (levy collecting) may receive funding from other sources, such as government grants or voluntary contributions; and
- make the results of the R&D services, that were funded by the levies, available to their contributors (for example, by providing the results to contributors in a paper form, or enabling contributors to access the results in electronic form);
- provide all contributors with information about how much of the levies collected from contributors were spent on core activities and how much of the levies were spent on supporting activities. Specifically, an RSP (levy collecting) should provide contributors with a ratio representing its expenditure on core activities versus supporting activities, and that ratio should represent a reasonable apportionment of the total levies collected by the RSP; and
- report to the levy contributors individually how much of the levies were used for providing R&D services and how much were not. Differentiating the use of the levy funds in this way is important because it will enable the contributors to prepare an accurate claim under the R&D Tax Incentive.

1.39 An entity qualifying as an RSP (levy collecting) is able to subcontract the provision of services, but must ensure that the subcontracted services are provided by an entity or individual that is competent in providing the subcontracted services. The RSP (levy collecting) must also be able to manage the subcontracted services and understand and explain the results to its levy contributors.

[Part 3, Subregulations 3.01(7) and (8)]

Conditions of Registration as an RSP

1.40 Under subsection 29A(3) of the Act, an entity registered as an RSP must satisfy the Board that it meets the conditions of registration that are specified in the regulations. If these conditions cannot be met then the Board may revoke an

RSP's registration. There are a number of conditions for registration that an RSP must satisfy.

1.41 The RSP must be competent to manage and provide services in relation to R&D activities. *[Part 3, Paragraph 3.02(2)(a)]*

1.42 In relation to the R&D entity for which the RSP is providing services:

- the RSP must act in the best interests of each R&D entity it is providing services to, consistent with any relevant contractual arrangements with each client. That is, an RSP could not act in the interest of one of its clients to the detriment of another client
[Part 3, Paragraph 3.02(2)(b)];
- the R&D entity (or R&D entities, where appropriate) must control the services provided by the RSP. The requirement for an R&D entity to 'control' the services provided by the RSP does not require close or micro-management of the provision of the services by the R&D entity. Rather, what is required is that the R&D entity provides some input into determining the scope of the services provided by the RSP. For example, if the R&D entity specifies the objectives of the R&D activities or establishes terms of reference for the services, this will provide some indication that the R&D entity controls the services provided by the RSP. Further, there may be circumstances where a single R&D entity cannot control the services provided by the RSP (such as in the case of an RSP (levy collecting)) because the RSP will be providing services to multiple R&D entities and will have received financial contributions from multiple entities. In these circumstances, it is sufficient that the collective group of R&D entities (rather than any particular R&D entity) controls the services provided by the RSP
[Part 3, Paragraph 3.02(2)(c)]; and
- the RSP must take steps to maintain the confidentiality of the services it provides, as well as the security of the information provided to it by the R&D entity, consistent with any relevant contractual arrangements it has with its clients. For example, if the relevant contractual arrangements between an RSP and the R&D entity specify that the RSP must maintain the confidentiality of information for the duration of the contract, or for the

duration of the contract plus a specified period, the RSP must comply with these contractual requirements but would not, for example, be required to permanently maintain the confidentiality of the information. The Board may investigate any claims by an RSP client that the RSP has breached this condition

[Part 3, Paragraph 3.02(2)(d)].

1.43 The RSP must have a management structure in place for the appropriate day to day management of the services provided in relation to R&D activities. For example, the RSP may create a committee to oversee an individual R&D project.

[Part 3, Paragraph 3.02(2)(e)]

1.44 The RSP must maintain separate financial records for services provided in relation to R&D activities for each R&D entity. This condition ensures that the R&D entity has access to the necessary information to register the R&D activities conducted on their behalf by the RSP, and to claim appropriately under the R&D Tax Incentive. *[Part 3, Paragraph 3.02(2)(f)]*

1.45 The RSP must ensure that all results of services provided in relation to R&D activities are either owned by the R&D entity or are able to be used by the R&D entity (consistent with a licensing arrangement, or some other arrangement under which the R&D entity has the right to use the results of services provided), including the results of services the RSP has subcontracted to another entity. This condition assists R&D entities to demonstrate that the R&D activities conducted by the RSP were conducted for the R&D entities.

[Part 3, Paragraph 3.02(2)(g)]

1.46 The RSP must maintain records of services provided in relation to R&D activities for each R&D entity and be able to provide a copy of these records to the Board if requested to do so by the Board. The types of records that must be maintained include records of the charges made to the entity and a copy of the contract to provide the services. This condition ensures that information that may be needed by an R&D entity or the Board in relation to claims under the R&D Tax Incentive is readily available. *[Part 3, Paragraph 3.02(2)(h)]*

1.47 The RSP must provide the Board with an annual report in relation to the services provided in relation to R&D activities. The report needs to be in a form approved by the Board.

[Part 3, Paragraph 3.02(2)(i)]

1.48 The RSP subcontracts the provision of services only when the research service provider is not able to provide part of the service itself, and only to the degree that it is unable to provide the services. Further, an RSP must not subcontract all R&D services for a particular client. This requirement would not, for example, prevent more than one RSP from collectively providing services to a client, provided that each of the RSPs involved in the collaboration provide some of the R&D services to the client R&D entity. The intention of the requirement is to ensure that RSPs do in fact provide some R&D services and do not merely act as a contract managing service for R&D entities. *[Part 3, Paragraph 3.02(2)(j)]*

1.49 The RSP must inform the client R&D entity and the Board about any services provided outside Australia or its external territories. This is to help ensure that the R&D entity is aware of the additional eligibility requirements for claiming expenditure on R&D activities conducted outside Australia and to ensure that the Board applies appropriate compliance checks when considering whether to register the activities.
[Part 3, Paragraph 3.02(2)(k)]

1.50 When deciding whether an RSP is competent to manage and provide services in relation to R&D activities as described in paragraph 3.02(2)(a), the Board must consider the following matters:

- the administrative arrangements the RSP has in place for planning and managing the provision of services. That is, the Board must be mindful of the organisational capacity of the RSP;
- the relevant performance of the RSP in relation to the services provided in relation to the R&D activities, particularly those that produced commercial results. For example, the Board must acknowledge R&D successes of the RSP;
- the annual cost of services provided in relation to R&D activities; and
- the RSP's main source of income.

[Part 3, Subregulation 3.02(3)]

Additional conditions for RSP (levy collecting)

1.51 An RSP registered as an RSP (levy collecting) must provide the Board with details of the services provided in relation to R&D activities for the year in which it was registered as an RSP. These details must be provided within 10 months after the end of the income year. This requirement is to allow the Board to check that the R&D activities conducted by the RSP (levy collecting) accord with the R&D activities claimed by the R&D entities which have contributed levies to the RSP (levy collecting) for the purpose of those activities.

1.52 An RSP registered as an RSP (levy collecting) must provide the Board with details about how much of the levies collected in the income year was used for providing services in relation to R&D activities, and how much of the levies was put to other uses. This requirement helps satisfy the program administrators that levy payments are being claimed appropriately under the R&D Tax Incentive. These details must also be provided within 10 months of the end of the income year. An RSP (levy collecting) must also provide the Board with any information about activities it has conducted for R&D entities as the Board requests. *[Part 3, Subregulation 3.02(4)]*

Research fields

1.53 Under Part III of the Act, the term research field is defined to mean a research field specified in regulations made for the purposes of the definition. The regulations relevantly define research field to be a field of research category mentioned in the *1297.0 - Australian and New Zealand Standard Research Classification (ANZSRC) 2008*, as it exists on the day these regulations commence. *[Part 1, Regulation 1.04]*

Applications and requests for further information

1.54 Under Part III of the Act, the Board has the power to approve the form in which applications and requests for further information will be accepted.

1.55 The regulations set out things which must be included in applications for:

- the registration of activities and findings about registered activities;

- advance findings about the nature of activities;
- findings about activities to be conducted outside Australia; and
- findings about core technology.

1.56 The Board can require the provision of particular information in a particular manner when it requests further information from an R&D entity.

Application for an advance finding on behalf of a R&D entity

1.57 Paragraph 28B(1)(a) of the Act allows for regulations to be made to nominate the type of entities that can make an application for an advance finding about the nature of activities, on behalf of an R&D entity. The type of entity include:

- RSPs that seek an advance finding about activities they are going to personally conduct. (That is, RSPs will not be able to seek an advance finding about activities that are to be conducted by the R&D entity itself or another RSP);
- a Cooperative Research Centre (CRC) (where the CRC is one entity) or, if the CRC is made up of more than one entity, one of these entities. If an entity that is a member of a CRC acts for the CRC, the Board will expect that the entity has the consent of all other entities making up the CRC to act on their behalf.

1.58 In order to create administrative savings, these entities are permitted to make applications for advance findings on behalf of R&D entities where they conduct R&D activities on behalf of one or more R&D entities. Permitting these entities to make a single application for an advance finding removes the need for each of the R&D entities, for which the activities are conducted, to make separate applications for advance findings in relation to the activities. It is also anticipated that RSPs will produce higher quality applications due to their specialist R&D experience and knowledge. *[Part 4, Regulation 4.01]*

Approved forms for applications

1.59 The Board has the power to approve all forms that are required under Part III of the Act. The regulations set out the

minimum requirements for particular application forms. The Board may include items in addition to those required by the Act and the regulations.

1.60 The regulations specify the minimum requirements for applications relating to:

- the registration of activities under section 27D of the Act;
- findings about registration under section 27G of the Act;
- advance findings about the nature of activities under section 28A of the Act;
- findings about activities to be conducted outside Australia under section 28C of the Act; and
- findings about core technology under section 28E of the Act.

[Part 4, Subregulation 4.02(1)]

General requirements of approved forms

1.61 A form approved by the Board for applications of the kind specified in the previous paragraph must contain:

- the name and ABN, ACN or ARBN (depending on the type of entity) of the R&D entity making the application;
- which requirement or requirements the entity meets under section 355-35 of the *ITAA 1997* for the entity to be an R&D entity, including a statement that the entity is not an exempt entity;
- the aggregated turnover (within the meaning given by the *ITAA 1997*) of the R&D entity. The aggregated turnover of an R&D entity is an entity's annual turnover plus the annual turnovers of any business entities it is connected or affiliated with; and
- a declaration by an individual, acting with the express or implied authorisation of the entity, that the information provided by the R&D entity in the

application is true and correct at the time of making the application.

1.62 This information is necessary for the Board to be satisfied that the applicant is eligible for the R&D Tax Incentive, and to ensure that the registration or finding is made for the correct entity *[Part 4, Subregulation 4.02(2)]*.

1.63 If the R&D entity making the application is the head company of a consolidated or MEC group and did not conduct an activity itself, the application must also include the details – that is, the name and ABN, ACN or ARBN – of the subsidiary member of the group that conducted or will conduct the activity, had services provided in relation to the activity, or that used or will use technology related to the activity. The application must also clarify that the applicant is the head company of the consolidated or MEC group. *[Part 4, Subregulation 4.02(3) and (4)]*

Approved forms for registration applications

1.64 In addition to the general requirements that all application forms must adhere to, there are specific requirements for particular forms.

1.65 Applications to register activities must also contain:

- a reference to any advance findings about the activities under section 28A of the Act;
- a reference to any findings about the activities under section 28C of the Act (activities conducted outside Australia);
- if a service was provided in relation to an activity by an RSP or a CRC:
 - the name of the RSP or CRC; and
 - details of the service provided by the RSP or CRC;
- a declaration by an individual, acting with the express or implied authorisation of the entity, that the entity maintained records, while the activities were conducted, that substantiate the conducting of the activities; and

- the total expenditure by the entity in the income year on the activities for which the R&D entity is applying for registration.

[Part 4, Subregulation 4.03(1)]

1.66 Where applications to register activities relate to activities that do not involve the payment of a levy to an RSP (levy collecting), the applications must also contain:

- for each activity for which an R&D entity is applying for registration:
 - whether, in the applicant’s opinion, the activity is a core R&D activity or a supporting R&D activity; and
 - the times (or, more specifically, the dates) when the activity was conducted during the income year. An activity may be conducted on an ongoing basis for the income year, or part of the income year, or may be conducted at a number of different times during the income year;
- for each activity that, in the applicant’s opinion, is a supporting R&D activity:
 - the core R&D activities that, in the applicant’s opinion, are supported by the supporting R&D activity, including each income year when the core R&D activities were registered or are proposed to be registered. The specified core R&D activities need not be a part of the application for registration for the income year in question; and
 - whether the supporting R&D activity satisfies the requirements in subsection 355-30(1) of the *ITAA 1997* or the requirements in subsection 355-30(2) of the *ITAA 1997*. That is, whether the supporting activity is directly related to the specified core R&D activity, or is conducted for the dominant purpose of supporting the core R&D activity;
- a reasonable apportionment of the total expenditure by the entity on core activities and supporting activities, including an estimate (in dollar terms) of the total expenditure on core activities and the total expenditure on supporting activities; and

- a brief description of the activities specified as core or supporting R&D activities and a brief description of the new knowledge which the core R&D activities, taken collectively, are intended to generate.

[Part 4, Subregulations 4.03(2) and (3)]

1.67 Where applications to register activities relate to activities that involve the payment of a levy to an RSP (levy collecting), the applications must instead contain:

- an activity which represents the proportion of the levy payment for core R&D activities. The expenditure attributed to this activity must be an estimate of the amount of the total levy payment made by the R&D entity that has been used by the RSP to conduct core R&D activities. An R&D entity should calculate this amount by applying the ratio of expenditure provided to the R&D entity by the RSP under subregulation 3.01(7) to the total amount of any levy paid by the R&D entity; and
- an activity which represents the proportion of the levy payment for supporting R&D activities. The expenditure attributed to this activity must be an estimate of the amount of the total levy payment made by the R&D entity that has been used by the RSP to conduct supporting R&D activities (which should also be based on the ratio provided to the R&D entity by the RSP).

[Part 4, Subregulations 4.03(4) and (5)]

1.68 The requirements assist the Board to determine the appropriate level of compliance activities to be undertaken in relation to the application and the R&D entity, and help maintain the integrity of the registration process *[Part 4, Regulation 4.03]*.

Approved forms for advance finding applications

1.69 Applications for advance finding about the nature of activities must also contain:

- for an application for identical advance findings on behalf of several R&D entities under subsection 28G(2) of the Act:

- the names of the R&D entities taken to have applied for the identical findings; and
 - if the entity making the application is an RSP, a CRC or an entity that is a member of a CRC, evidence that the entity is acting with the written consent of the R&D entities;
- for each activity for which the entity is applying for an advance finding:
 - whether, in the applicant’s opinion, the activity is a core R&D activity or a supporting R&D activity;
 - if the activity was, or is being, conducted in the income year during which the application is made — when the activity was, or is being, conducted during the income year; and
 - if the activity is yet to be conducted — evidence from which it is reasonable to conclude that the activity is expected to be conducted in the income year in which the application is made or in either of the next two income years.
- for each activity that, in the applicant’s opinion, is a supporting R&D activity:
 - the core R&D activities that, in the applicant’s opinion, are supported by the supporting R&D activity, including when the core R&D activities were conducted or will be conducted. The specified core R&D activities need not be a part of the application for an advance finding. The Board will require evidence as to the nature of the specified core R&D activity, regardless of whether it is part of the advance finding request or not; and
 - whether the supporting R&D activity satisfies the requirements in subsection 355-30(1) of the *ITAA 1997* or the requirements in subsection 355-30(2) of the *ITAA 1997*. That is, whether the supporting activity is directly related to the specified core R&D activity, or is conducted for the dominant purpose of supporting the core R&D activity;

- a detailed description of the activities specified as core or supporting R&D activities, including an assessment of why the activities specified as core or supporting R&D activities qualify as core or supporting R&D activities with reference to the relevant criteria in sections 355-25 or 355-30 of the *ITAA 1997*;
- a detailed description of the new knowledge which the core R&D activities, taken collectively, are intended to generate (including discussion of the processes and goals of the collective core R&D activities of which the specified activities form a part);
- the total actual and reasonably anticipated expenditure by the entity on each activity for which the entity is applying for an advance finding. Reasonably anticipated expenditure is expenditure that the R&D entity has a rational and objective basis to expect that it will incur, even though (given the unpredictable nature of R&D activities) it is possible that actual expenditure incurred will be more or less than what was originally estimated; and
- for each activity that, in the applicant's opinion, is a supporting R&D activity in relation to specified core R&D activities that are not registered, the total actual expenditure and reasonably anticipated expenditure (that is, expenditure that the R&D entity has a rational and objective basis to expect that it will incur) by the entity on the unregistered core R&D activities.

1.70 These requirements assist the Board to obtain sufficient information in the application form to make an advance finding in relation to activities. Although the Board may seek further information if necessary, the process for making an advance finding is accelerated if most or all the information necessary to the decision making process is provided to the Board at the point of application.

[Part 4, Regulation 4.04]

Approved forms for overseas finding applications

1.71 Application for a finding about activities to be conducted outside Australia must also contain:

- for each overseas activity for which the entity is applying for a finding:

- whether, in the applicant’s opinion, the activity is a core R&D activity or a supporting R&D activity; and
 - if the activity was, or is being, conducted in the income year in which the application is made — when the activity was, or is being, conducted during the income year;
- for each overseas activity that, in the applicant’s opinion, is a supporting R&D activity:
 - the core R&D activities that, in the applicant’s opinion, are supported by the supporting R&D activity, including when the core R&D activities were conducted or will be conducted. The specified core R&D activities need not be a part of the application for an overseas finding. The Board will require evidence as to the nature of the specified core R&D activity, regardless of whether it is part of the overseas finding request or not; and
 - whether the supporting R&D activity satisfies the requirements in subsection 355-30(1) of the *ITAA 1997* or the requirements in subsection 355-30(2) of the *ITAA 1997*. That is, whether the supporting activity is directly related to the specified core R&D activity, or is conducted for the dominant purpose of supporting the core R&D activity;
- an explanation (including supporting evidence or an independent opinion) of why the overseas activities cannot be conducted solely in Australia or the external Territories. This explanation must cite at least one of the specified reasons that the overseas activities cannot be conducted solely in Australia or the external Territories listed in subsection 28D(4) of the Act. In a situation where the reason why activities cannot be conducted solely in Australia or the external Territories is relatively straightforward and can be demonstrated by supporting evidence, an independent opinion will generally not be required. However, an independent opinion may be required in circumstances where it is not clear why activities cannot be conducted solely in Australia or the external Territories and there is no supporting evidence that objectively establishes that this is the case;

- a description of the Australian core activities to which the overseas activities have a significant scientific link or, if the core activities have already been registered, the registration details of the Australian core activities;
- an explanation (including supporting evidence or an independent opinion) of why the Australian core activities cannot be completed without the overseas activities being conducted. Again, if the reason why the Australian core activities cannot be completed without the overseas activities being conducted is relatively straightforward and can be demonstrated by supporting evidence, an independent opinion will generally not be required. However, an independent opinion may be required where the position is less clear;
- the total actual expenditure and reasonably anticipated expenditure (that is, expenditure that the R&D entity has a rational and objective basis to expect that it will incur) by any entity on:
 - the overseas activities; and
 - any other overseas activities that have a significant scientific link to the Australian core activities; and
- the total actual expenditure and reasonably anticipated expenditure (that is, expenditure that the R&D entity has a rational and objective basis to expect that it will incur) by any entity on:
 - the Australian core activities to which the overseas activities have a significant scientific link; and
 - any supporting R&D activities conducted in Australia or the external Territories that support the Australian core activities.

1.72 These requirements will assist the Board in obtaining the information needed to determine whether the conditions specified in section 28D of the Act are met.

[Part 4, Regulation 4.05]

Approved form for request for further information

1.73 Part III of the Act gives the Board the power to request, in writing, further or additional information it requires

for the purposes of making a decision. This information must be provided to the Board in a particular manner which is acceptable to the Board.

1.74 The Board may request further information from an entity in relation to:

- an application to register activities;
- an application to vary the registration of activities;
- the making of an advance finding, a core technology finding and a finding about activities to be conducted outside Australia;
- expenditure (or reasonable estimates of expenditure, based on a reasonable apportionment methodology) on individual activities;
- the making of a finding about activities conducted overseas; and/or
- an application to register as a Research Service Provider.

1.75 In approving a form in which further information must be given, the Board must ensure the form only requires the production of information or material that the Board would reasonably require in order for it to make a decision. In circumstances where the provision of the information by the entity will extend beyond the normal timeframes for delivery of information, the Board may consider granting a further period of time for the delivery of the information. In doing so, the Board will have regard to the circumstances of each particular case, and act in accordance with the decision-making principles made under section 32A of the Act.

1.76 The types of information that it would be reasonable for the Board to require in a request for further information include (but are not limited to):

- supporting evidence or independent advice that the outcome of core R&D activities could not be deduced by a competent professional in the relevant research field on the basis of current knowledge or experience of, and information available to, persons in the research field;

- documents explaining research conducted by the R&D entity to gain information or knowledge or develop experience in a research field;
- supporting evidence or independent advice that activities could not be carried out solely in Australia;
- results, or a summary of results, of core R&D activities;
- details about activities that have not already been provided to the Board;
- a reasonable estimate of expenditure by the R&D entity in an income year on any or all activities of the R&D entity about which the Board intends to make a finding;
- records that substantiate the conducting of the activities; and
- the details – that is, the name and ABN, ACN or ARBN – of the subsidiary member of the group that conducted or will conduct the activity, had services provided in relation of the activity, or that used or will use technology related to the activity.

[Part 4, Regulation 4.06]